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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Applicant : William J. Schmidt
Serial No. : 09/385,405
Filed : August 30, 1999
For : METHOD FOR THE PURIFICATION AND
RECOVERY OF WASTE GELATIN
Examiner : Robert J. Popovics
Art Unit : 1723
Attorney Docket No. : 671.1.002 CIP-3

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VIRGINIA 22313-1450

ON November 13, 2003

NAME Jill S. Garretson

SIGNATURE

Jill S. Garretson

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

November 13, 2003

REQUEST FOR REINSTATEMENT OF APPEAL

Dear Sir:

Applicant respectfully requests Reinstatement of the Appeal including consideration of the Appeal Brief that was filed on December 17, 2002.

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Subsequent to filing the Appeal Brief, the Examiner issued a non-final Office Action on March 13, 2003 essentially setting forth word for word all rejections which were addressed in the Appeal Brief. However, on page 9 the Examiner issued a new ground of rejection. This rejection is a double patenting rejection for obviousness-type double patenting over U.S. Patent No. 6,361,802. This ground of rejection was not presented in a final Office Action which resulted in the filing of the Brief on Appeal.

Applicant responded on May 14, 2003 taking issue with all of the rejections in which Applicant stated as follows:

“The first seven pages of the Office Action set forth word for word the second 112, 102 and 103 rejections set forth in the final Office Action of May 21, 2002. Not one reference is made to Applicants reply brief and the complete analysis of the claimed invention, the prior art and the patentable features of the claimed invention provided therein”.

The above-mentioned response also addressed the double patenting rejection in view of U.S. Patent No. 6,361,802 and clearly pointed out how this double patenting rejection had no basis. In the present final Office Action, the Examiner has acknowledged that the double patenting rejection has no basis and has withdrawn the same.

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Quite surprisingly, the Examiner states on page 9 of the present final Office Action.

“If it was Applicant’s intent to take this matter to the Board, then it is unclear why Applicant did not request Reinstatement of the Appeal, and optioned at the last Office Action clearly set forth”.

“Applicant’s remarks to this end, puzzle the Examiner, since Applicant’s remarks imply that the Examiner somehow precluded Applicant from taking this matter before the Board.”

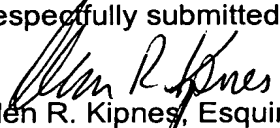
37 C.F.R. 1.193 (a) (2) and MPEP Section 1208.1 clearly prohibit the entry of a new ground of rejection in an Examiner’s answer. The Examiner did not file an Answer to Applicant’s Brief but instead reopened prosecution (MPEP Section 1208.2). Because there was a new ground of rejection presented by the Examiner, Applicant had no choice but to respond to the new ground of rejection during prosecution herein. If Applicant, as suggested by the Examiner, had merely reinstated the Appeal, the double patenting rejection would not have been addressed during prosecution and would have been inappropriate on Appeal for the first time. Therefore Applicants are “puzzled” by the Examiner’s comments set forth on page 9 of the new final rejection.

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Applicant requests Reinstatement of the Appeal and the filing of an Examiner's Answer as soon as possible so that Applicant may have issues of patentability addressed by the Board of Appeals.

It is believed that no fee is due in connection with this matter. However, if any fee is due, it should be charged to Deposit Account No. 23-0510.

Respectfully submitted,


Allen R. Kipnes, Esquire
Registration No. 28,433
Attorney for Applicant

Address All Correspondence to:

Allen R. Kipnes, Esquire
WATOV & KIPNES, P.C.
P.O. Box 247
Princeton Junction, NJ 08550
(609) 243-0330